(1)

Supreme Court, U.S.
FILED

APR 3 2003

OFFICE OF THE CLERK

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL JACOBSON,

Petitioner

v.

SOLID WASTE AGENCY OF NORTHWEST NEBRASKA
S.W.A.N.N.

On Petition For Writ of Certiorari
To The Supreme Court of the State of Nebraska

PETITION FOR WRIT OF CERTIORARI

MICHAEL JACOBSON
PRO SE
613 NORTH ASH STREET
GORDON, NEBRASKA 69343
308-360-0963

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10 PP

QUESTIONS

1. **Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate that SWANN's regulation did not regulate interstate commerce and impermissibly discriminate against interstate commerce?**

2. **Was it an abuse of discretion for the Nebraska Supreme Court to PRESUME that Plaintiff was guilty of using "service" or being a nuisance?**

3. **Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate that SWANN has jurisdiction inside Plaintiff's home?**

4. **Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate the "Act" could be held to destroy itself?**

TABLE OF AUTHORITIES

CASES:

Wyoming v. Oklahoma, 502 U.S. 437, 454 (1992)

Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't. of Natural Resources, 504 U.S. 353, 359 (1992)

H.P. Hood & Sons, Inc v. DuMond, 336 U.S. 525, 535 (1949)

C & A Carbone, Inc., 114 S. Ct. at 1682

Sporhase v. Nebraska ex. ret. Douglas, 102 S. Ct. at 1263

Texas & Pacific R.C. v. Abilene Cotton Oil Co., 275 S. Ct. 350, 358

STATUTES:

NEB.REV.STAT. section 25 - 21, 150

NEB.REV.STAT. section 12-2020(4)

NEB.REV.STAT. section 13-2020(4)

NEB.REV.STAT. section 13-2000

NEB.REV.STAT. 13-2002(4) AND (7)(a)

NEB.REV.STAT. 13-2018 (a)

NEB.REV.STAT. 81 -15, 166(1)

NEB.REV.STAT. 28 - 1321

NEBRASKA & U.S. CONSTITUTION

U.S. Const.art I sec. 8 cl. 3

U.S. Const Amend. 5, 14

Nebraska Constitution Article I, Sec. 3 and Sec. 7

JURISDICTION

The Nebraska District Court of Dawes County in response to Plaintiff's Petition for a Declaratory Judgment Neb. Rev. Stat. Section 25-21, 150 and a Motion for Summary Judgment appears at Appendix A, entered on the 30th day of April, 2001 a Decision and Judgment in Plaintiff's favor that appears at Appendix B.

Stipulation plus receipts that appears as Appendix C

A timely appeal was perfected to the Nebraska Supreme Court by the Defendant. The Nebraska Supreme Court rendered a decision against Plaintiff on November 22, 2002; appearing at Appendix D.

A timely petition for rehearing was denied by the Nebraska Supreme Court on January 3, 2003, as appears in Appendix E.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

STATEMENT OF THE CASE

This petition for review concerns the Nebraska Supreme Court interpretation of LB 1257, Integrated Solid Waste Management Act (hereinafter "the Act") Article 20 of Chapter 13 of the Nebraska Statutes enacted in 1992, with the stated intent by the Nebraska Legislature to reduce the amount of garbage at its source.

Pursuant to Sections 13-801 to 13-827 of R.R.S. Neb. 1943 as amended (the "Interlocal Cooperation Act") on October 5, 1992 the Solid Waste Agency of Northwest Nebraska (hereinafter SWANN) was created.

On October 1, 1993 SWANN began billing Plaintiff at 613 N. Ash Street, Gordon, NE 69343 for alleged garbage service. On March 20, 1997, Plaintiff appeared before SWANN's Board of Directors and testified that he does not utilize, nor has he utilized in the past, the service of SWANN, either for the pickup, removal or disposal of any solid waste. Shortly thereafter SWANN converted Plaintiff's bill into a tax. This "special tax" of $879.95 was accepted by the Sheridan County Treasurer of the State of Nebraska and assessed as a lien against Plaintiff's legal address and home.

Very shortly thereafter a tax sale was held by the Sheridan County Treasurer in the amount of $879.95. The First Union National Bank of Miami, Florida bought the tax lien for that amount at 14% interest. After 3 years, the Bank had 6 months to foreclose on "their investment".

In response to *Village of Winside* 553 N.W.2d 476, (1996), in 1997 an amendment was incorporated by the Nebraska

legislature into section 13-2020(4) to more clearly define when a premises is served by a solid waste collection system .

On January 21, 1999 SWANN issued Ordinance / Resolution No. 1999-01, which, among others, stipulated a requirement set out in Part E of 4.05: "The solid waste generator shall submit at least two (2) receipts monthly from the alternate permitted facility."

On November 17, 1999, Plaintiff filed his initial Petition for Declaratory Judgment requesting the court to discharge any alleged liability of Plaintiff.

Because of SWANN's aversion to a court of law, on May 18, 2000 SWANN's Board of Directors passed Resolution 2000-16 which wrote off Plaintiff's alleged garbage bill up to January 21, 1999.

REASONS FOR GRANTING THE PETITION

QUESTION #1

Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate that SWANN's regulation did not regulate interstate commerce and impermissibly discriminate against interstate commerce?

The regulation requiring private market participants to use the Pine Ridge Landfill twice a month are a poorly disguised attempt to make use of Pine Ridge Landfill unduly burdensome and expensive. The regulation is intended to drive up the costs

of using an alternative, out of state facility. It must be remembered SWANN did not enact this rule until 7 years after its inception, and gave no public reason why they enacted it. Moreover, the Nebraska Supreme Court admitted to economic protectionism in its decision.

The commerce clause gives to Congress the authority "(to) regulate Commerce . . . among several States. . ." U.S. Const. art. I sec. 8, cl.3 this grant of authority to the Congress is at the same time a self-executing limitation on the powers of the states to regulate such commerce, (thus the negative or "dormant" aspect of the clause), Wyoming v. Oklahoma, 502 U.S. 437, 454 (1992), and that limitation prohibits states from advancing their local commercial interests by "curtailing the movement of articles of commerce into or out of the state," Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't. of Natural Resources, 504 U.S. 353, 359 (1992) (quoting H.P. Hood & Sons, Inc. v. DuMond, 336 U.S. 525, 535 (1949), or within the state's subdivisions, even in the absence of affirmative action by the Congress. The Supreme Court has concluded that garbage or the services associated with garbage, such as its processing and disposal, are articles of commerce within the meaning of the commerce clause. C & A Carbone, Inc. 114 S. Ct. at 1682. As a result, actions taken by states that tend to interfere with the flow of these services are subject to scrutiny by courts.

SWANN violates the commerce clause in the most basic way by determining that Plaintiff must pay for SWANN's alleged service, that Plaintiff did not request, does not use, does not want, because Plaintiff has taken steps to reduce his garbage at the source. Further, SWANN converted the alleged garbage bill into a "special tax" and threatened to sell his home. Currently the Plaintiff has the choice to move to South Dakota,

or give up his constitutional rights and pay for a service that he does not need

QUESTION #2

Was it an abuse of discretion for the Nebraska Supreme Court to PRESUME that Plaintiff was guilty of using "service" or being a nuisance?

The Nebraska Supreme Court did not cite any case law to support this unconstitutional opinion. Does the United States Constitution Due Process Amendment not demand that Plaintiff is innocent until proven guilty? The Nebraska District Court recognized 20 receipts of payment but the Nebraska Supreme Court, in their zeal to protect SWANN only saw 13. The 20 receipts meet the burden of proof set by the Nebraska Legislative history, but the court refused to accept receipts. Statutes creating rebuttable presumption have long been disfavored under Due Process clauses of Fifth and Fourteenth Amendments. U.S.C.A.Const. Amends. 5, 14.

The Nebraska Supreme Court's argument that this regulation is needed somehow to protect public health is without merit. As the Nebraska District Court adjudicated that Nebraska's nuisance laws are more reasonable which prohibits the creation of a nuisance. Neb. Rev. stat. 28-1321. The Act dictates three years and six months to correct a nuisance" . .and a town has a number of non-discriminatory alternatives for addressing health and environmental problems alleged to justify ordinances, such as uniform safety regulations enacted without object to discriminate. U.S.C.A. Const. Act 1 Section 8, cl.3. C & A Carbone v. Town of Clarkstown, N.Y. 114 S. Ct at No.4 page 1678. The Nebraska Supreme Court's claim to all solid waste

generated in Nebraska is based on "legal fiction of State ownership." Sporhase v. Nebraska ex. ret. Douglas 102 S. Ct. at 1263.

QUESTION #3

Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate that SWANN has jurisdiction inside Plaintiff's home?

If, how, when Plaintiff produces solid waste inside his own home is not a concern of Defendant. It is not garbage until Plaintiff relinquishes ownership.

Plaintiff pays for whatever is brought in the front door of his home. Whatever he discards out the back door of his home and hauls immediately to the Federal waste site in South Dakota, in his 1978 T-Bird, is his responsibility. Plaintiff earned a B.A. in Chemistry and is qualified to manage his own garbage inside his home.

This violates Nebraska Constitution, Article I, Sec. 7, "The right of people to be secure in their persons, houses, papers, ..."

QUESTION #4

Was it an abuse of discretion for the Nebraska Supreme Court to adjudicate the "Act" could be held to destroy itself?

SWANN's Regulations are arbitrary and capricious because they discourage parties from reducing solid waste at the source, which is a primary objective of the Act. "It is an elementary

rule of construction that act cannot be held to destroy itself" Texas & Pacific R. C. v. Abilene Cotton Oil Co. 275 S. Ct. 350, 358.

CONCLUSION

Plaintiff asks the Court to consider what sins are required to enable the government to sell his home. Plaintiff has always hauled his solid waste to another state. He does refuse to pay for a service that he does not need, and which is arbitrarily forced on residents of SWANN's jurisdiction.

Have Plaintiff's constitutional rights been extinguished? For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Jacobson

Michael Jacobson

4/3/03

Date

s/Paul D. Empson District Judge
Paul D. Empson District Judge

On April 30, 2001, copies of this order were mailed to the parties or their attorneys.

s/Mace McGinley
Clerk of the District Court

APPENDIX C

IN THE DISTRICT COURT OF
DAWES COUNTY, NEBRASKA

MICHAEL JACOBSON	)	**CASE NO. C199 166**
Plaintiff,	)	
	)	
vs.	)	
	)	
SOLID WASTE AGENCY	)	**STIPULATION**
NORTHWEST NEBRASKA,	)	
SWANN Defendant	)	

COMES NOW the Plaintiff and the Defendant by and through its undersigned attorney, and make this stipulation for the purpose of submitting issues and an agreement upon facts for disposition of the Plaintiff's motion for summary judgment.

The parties stipulate and agree as follows:

1. The Plaintiff has files an "Amendment to the Petition for Declaratory Judgment" which is the Plaintiff's third amended petition. The Defendant has filed its "Answer to Plaintiff's Third Amendment to the Petition for Declaratory Judgment". The Plaintiff has alleged that the Rules and Regulations created and passed by the Defendant, January 21, 1999 are not binding upon the Plaintiff and are not enforceable as applied to the Plaintiff for the purpose of requiring the Plaintiff to pay Defendant's rates and charges assessed against the Plaintiff and the Plaintiff's premises for solid waste management, collection and disposal. The parties agree

that a true copy of the Rules and Regulation of the Defendant Agency are attached hereto marked Exhibit "A".

2. The parties agree that the Plaintiff denies that he has utilized in the past, the services of the Defendant Agency either for pick up, removal or disposal of any solid waste, and especially for that period commencing January 1, 1999 and through the date of this stipulation.

3. The parties agree that in support of the Plaintiff's claim that he does not utilize the services of the Defendant Agency for solid waste collection, transportation and disposal, the Plaintiff would offer evidence in the form of receipts, copies of which are attached hereto marked as Exhibit "B".

4. The parties agree that the Plaintiff would testify under oath that he ahs not utilized the services of the Defendant Agency for solid waste collection, transportation or disposal from and after January 21, 1999 to the present. The parties agree that the Defendant would testify under oath that he collects and transports all of his solid waste personally to an alternate solid waste land fill located on the Pine Ridge Indian Reservation and owned and operated by the Oglala Lakota Nation, Pine Ridge, South Dakota.

5. The parties further stipulate and agree that the Plaintiff does not comply with the Defendant's Rules and Regulations by:
   a. Providing the written statement required by Rules and Regulations of the Defendant Agency set forth in Section 4.05 (B); and

   b. Plaintiff does not provide the required receipts

as provided and required by the Rules and Regulations of Defendant Section 4.05(E).

6. The Plaintiff and the Defendant further stipulate and agree that the following facts may be accepted by the Court as true:

   a. The Plaintiff is a resident of Sheridan County, Nebraska and a sole resident (tenant) of the property more specifically described as follows: 613 North Ash Street, Gordon, Nebraska (N15'Lot 8, Pt. of Lot 9, Block 40, Original Town of Gordon, Sheridan County, Nebraska;

   b. The Defendant is an entity with its principal place of business in Chadron, Nebraska, being a political subdivision created under the Nebraska Interlocal Cooperation Act, NEB.REV.STAT δ13-801 to 13-827 and the Integrated Solid Waste Management Act, NEB.REV.STAT. δ13-2001 et seq.;

   c. The City of Gordon, Sheridan County, Nebraska is a member of the Defendant entity, Solid Waste Agency of Northwest Nebraska, and the Plaintiff's residence is located within the jurisdiction of the Defendant entity and the City of Gordon, Sheridan County, Nebraska;

   d. The Defendant entity was formed for the purpose of management, collection, disposal, and recycling of solid waste within the jurisdiction of the Defendant entity;

   e. The Defendant entity as part of its official functions, picks up and disposes of our receives

solid waste in each of its member jurisdictions;

f. The parties agree that the Defendant Agency offers and provides generally the following services and benefits within each of the member jurisdictions:

i. Solid waste disposal dumpsters and solid waste containers are provided for private and/or commercial use.

ii. The Defendant has provided and offered collection and pick up of solid waste for dumpsters and individual solid waste containers bi-weekly; and special pick up arrangements for residential customers at no charge.

iii. Green dumpster collection for yard waste and composting are provided by Defendant to persons residing within the jurisdiction.

iv. The Defendant provides recycling services and benefits to persons residing within the jurisdiction.

v. Defendant promotes and provides summer youth education for all persons within the jurisdiction including Scout groups, etc.

vi. Defendant provides community event collection services, and including community events.

vii. The Defendant provides containers for city-wide cleanup activities and Defendant further maintains and provides alley cleanup.

viii. Defendant provides a community solid waste drop off location for each community within the Defendant's jurisdiction including the jurisdiction.

ix. Defendant provides public education presentations regarding solid waste

management, collection and disposal.

x. The Defendant co-sponsors hazardous materials collection day and assists and provides in disposal of hazardous waste at an alternate facility.

xi. The Defendant offers and provides a paint drop and swap program within its jurisdiction.

xii. The Defendant provides assistance and grant writing for municipal projects including the municipality of Gordon, Nebraska.

xii. The Defendant provides crushed concrete for the use of municipalities and specially for the Gordon alley improvement project.

xiii. The Defendant provides assistance and grant writing for municipal projects including the municipality of Gordon, Nebraska.

xiv. The Defendant provides special disposal sites and assistance for natural disasters.

7. The parties further stipulate and agree that from and after January 21, 1999, the Defendant Agency has regularly billed the Plaintiff for solid waste collection, transportation and disposal services at the rate of $14.80 per month and there is claimed owing to the Defendant Agency by the Plaintiff, the sum of $382.29 as of November 1,2000.

DATED this 23rd day of January, 2001.

SOLID WASTE AGENCY OF NORTHWEST NEBRASKA,
Defendant

By s/ *Dennis D King*
Dennis D. King, NSBA #12220
One of Defendant's Attorneys
SMITH AND KING, P.C.
P.O. Box 302
Gordon, NE 69343-0302
Telephone: 308-282-0690
Facsimile: 308-282-1029

DATED this 23rd day of January, 2001

s/ Michael Jacobson
Michael Jacobson, Plaintiff

BEST AVAILABLE COPY

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: ~~4~~ 10/30 19 99

Customer's
Name Michael Jacobson
Address 613. N. Ash
Gordon, NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
4/30	3 garbage bags cash	5 00
		5 00

No 2112 Rec'd by. alh

OGLALA LAKOTA NATION
Solid Waste Management
PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 10/21 19 99

Customer's
Name Michael Jacobson
Address 613 N. Ash
Gordon, NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	user fee's for May 1999 & June 1999.	$10 00
		$10 0

No 2249 Rec'd by. alh

OGLALA LAKOTA NATION
Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 10/21 19 99

Customer's
Name Michael Jacobson
Address 613 N. Ash
Gordon, NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	10 bags of garbage cash	5 00
		$ 5 00

No 2248 Rec'd by. Alh

613 North Ash
Gordon NE 69343

11-23 [illegible] 1999

RECEIVED FROM Michael Jacobson

five and 00/100 DOLLARS

$3 bags of trash

Account Total $ $5.00 cash Solid Waste Mgmt

Amount Paid $ [illegible]

Balance Due $ [illegible]

Martha Protestor

THE EFFICIENCY LINE AN AMPAD PRODUCT

JUDE

12-23-99

Vince Talbert

$5.00

613 North Ash
gordon NE

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 12-23 19 99

Customer's

Name Michael Jacobson

Address 613 North Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
12/23	bags of trash	5 00
		5.00

№ 2511 Rec'd by mc

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 1-31 2000

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
1/31	bags of trash	5 00
		5.00

№ 2512 Rec'd by mc

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 2-29 ~~2000~~

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE RECD	DESCRIPTION	AMOUNT
2/29	bags of trash	5.00
		5.00

№ 2513 Rec'd by.

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 3/31 ~~2000~~

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE RECD	DESCRIPTION	AMOUNT
	Trash	5.00
	Cash	
		5.00

№ 2547 Rec'd by: mp

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 5-11 2000

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE. 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	Trash for April 2000	5 00
		5 00

№ 2621 Rec'd by: MP

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 5-11 2000

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	Trash for May 2000	5 00
		5 00

№ 2620 Rec'd by: MP

Solid Waste Management
PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 1/22 19 2001

Customer's Name Michael Jacobson
Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	Oct 2000	5 00
	Nov 2000	5 00
	Dec. 2000	5 00
		15 00

№ 2714 Rec'd by

Solid Waste Management
PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 , FAX (605) 867-1464

date: 1/22 19 2001

Customer's Name Michael Jacobson
Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE Rec'd	DESCRIPTION	AMOUNT
	January 2001	5
	3 bags garbage	
		5 00

№ 2715 Rec'd by

(2)

APPENDIX

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL JACOBSON,

Petitioner

v.

SOLID WASTE AGENCY OF NORTHWEST NEBRASKA
S.W.A.N.N.

On Petition For Writ of Certiorari
To The Supreme Court of the State of Nebraska

PETITION FOR WRIT OF CERTIORARI

MICHAEL JACOBSON
PRO SE
613 NORTH ASH STREET
GORDON, NEBRASKA 69343
308-360-0963

45 pgs

APPENDIX A

IN THE DISTRICT COURT OF DAWES COUNTY, NEBRASKA

MICHAEL JACOBSON Plaintiff,	)	**CASE NO. C199 166**
vs.	)	
SOLID WASTE AGENCY NORTHWEST NEBRASKA, SWANN Defendant	)	**MOTION FOR SUMMARY JUDGEMENT**

COMES NOW the Plaintiff and moves the Court for summary judgment in this matter of the authority of SWANN's Rules & Regulations, in favor of the Plaintiff and against the Defendant, for the following reasons:

1. **On January 21, 1999, the Defendant, SWANN's Board of directors, passed rules and regulations 2.06, 4.04, and 4.05E.**
2. **These rules are not fair and equitable regarding plaintiff, because plaintiff has reduced his solid waste at the source and is in compliance with Neb. Rev. Stat. 13-2002 (4) and (7) (a); 13-2017 (1); 13-2018 (a); 81-15, 166(1); Plaintiff does not generate enough solid waste to require transporting solid waste 32.5 miles to alternate facility in S.D. on the Oglala Sioux Indian Reservation twice monthly.**
3. **These rules are not authorized under Nebraska Rev. Stat., 13-2001 Integrated Solid Waste Management Act, Solid Waste Disposal Act, section 1002 et seg. as amended, 42 U.S.C.A. Section 6901 et seg;**
4. **Violates Interstate Commerce Clause, Constitution of U.S.A.**

5. **Violates Nebraska Constitution, Article I sec. 3 and Sec. 7.**

The Plaintiff respectfully requests summary judgment on this issue, these SWANN Rules and Regulations are without statutory authority.

MICHAEL JACOBSON
613 N. Ash Street
Gordon, NE 69343
B.A. Chemistry

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was hand delivered or mailed to Dennis D. King, Attorney at Law, P.O. Box 302, Gordon, NE 69343-0690, postage prepaid, by 1st Class U.S. Mail on the _____ day of _____, 2000.

APPENDIX B

IN THE DISTRICT COURT OF DAWES COUNTY, NEBRASKA

MICHAEL JACOBSON	)	**CASE NO. C199 166**
Plaintiff,	)	
	)	
vs.	)	
	)	
SOLID WASTE AGENCY	)	**DECISION and**
NORTHWEST NEBRASKA,	)	**JUDGEMENT**
SWANN Defendant	)	

On February 5, 2001, the plaintiff's Motion for Summary Judgment on his Petition for Declaratory Judgment, as amended, was submitted to the court. The stipulation of the parties was filed, which provides, among other things, the case is deemed submitted to the court "on the merits and for final disposition based upon the stipulation of facts previously filed with the Court." The stipulation of facts, Exhibit 1, consisting of four pages and "Exhibit 'A' " and "Exhibit 'B'," was received in evidence and ordered to remain in the court file. Briefs were received in evidence and ordered to remain in the court file. Briefs were received from both sides and the court took the matter under advisement.

Facts and Issues

The defendant (SWANN), pursuant to its authority under Article 20 of Chapter 13 of the Nebraska Statutes, make provision for the collection, storage and disposal of solid waste in a territory which includes the town of Gordon, Nebraska, where the plaintiff's premises are located. δ13-2020(4), R.R.S. 1997, provides the authority for SWANN to charge the plaintiff for its services. That statute says, in part:

> For purposes of the charges authorized by this section, the premises are served if solid waste collection service is available to the premises or if a community solid waste drop-off location is provided, unless the person who would otherwise be subject to such rates or charges proves to the governing body of the county, municipality, or agency that his or her solid waste was lawfully collected and hauled to a permitted facility. Such proof shall be provided by a receipt from a permitted facility, a statement from a licensed hauler, or other documentation acceptable to the governing body of the county, municipality, or agency.

The evidence is, from the Exhibit 1 stipulation, that SWANN serves the plaintiff's premises, but that the plaintiff hauls his solid waste to a facility at Pine Ridge, South Dakota. Exhibit "B" shows that he did so, somewhat less than once per month, in 1999, 2000 and now in 2001 He apparently provided the receipts to the defendant. There is no evidence that the Pine Ridge facility is not "approved" as required by statute, or that the receipts do not comply with the statute set out above.

While the evidence is that the plaintiff did not comply with the defendant's regulation, there is no evidence that he did not comply with Nebraska law. While the court will treat pro se parties the same as represented parties when it can fairly do

so, the court also takes notice that the defendant, who the court believes prepared the stipulation of facts did not tell the court that the plaintiff did not comply with δ13-2020(4).

The contest has arisen because the defendant has, by the authority of δ13-2023 R.R.S. 1997, adopted regulations. One of the regulations, 4.05, deals with the manner of obtaining the exemption from SWANN's services that is mentioned in . δ13-2020(4). While it is possible that the plaintiff has failed to comply with other of the provisions of the regulation, the argument and briefs provided to the court show that the bone of contention is a portion of the requirement set out in part E. of 4.05: "The solid waste generator shall submit at least two(2) receipts monthly from the alternate "permitted facility." The plaintiff is "the solid waste generator."

Authority to Regulate

Prerequisite to lawful regulation is statutory subject-matter authority. What may SWANN regulate? . δ13-2020(4) permits it to regulate ". . . the use, operation, and control of a facility or system." . δ13- 2023 expands that somewhat to include, ". . . collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste . . ." All these things pertain to solid waste that has or is about to enter the system. There is no provision for regulation of solid waste that does not enter the system.

The Legislature has made a way for a "solid waste generator" to elect to keep his solid waste out of the system and avoid SWANN's charges. He may do this by proving to SWANN's governing body that his solid waste was lawfully collected and hauled to a permitted facility. He may submit any one of three kinds of proof: 1. a receipt from a permitted

facility, or 2. a statement from a licensed hauler, or 3. other documentation acceptable to the governing body of SWANN.

In our case, the plaintiff elected number 1, the receipt from a permitted facility, which is a statutorily acceptable method of the proof required to opt out of the system. Consequently, SWANN has no authority to regulate the plaintiff or his solid waste. Further, since the Legislature elected to impose draconian penalties for "cheating " by using the system after opting out a did not elect to require periodic submission of proof, it appears that one presentation of acceptable proof is sufficient.

Regulatory Reasonableness and Legitimate Public Purpose

It might be claimed that Reg. 4.05 is so necessary to carry out the policies enumerated in Article 20, and/or to protect the public health and safety, that the Legislature simply would not preempt regulation in regard to the plaintiff's solid waste. The court will therefore examine the issue: Is 4.05 a lawful regulation if somehow SWANN is authorized to make such a regulation?

The validity of a police regulation, whether established directly by the state or by some public body acting under its sanction, must depend upon the circumstances of each case and the character of the regulation, whether arbitrary or reasonable and whether really designed to accomplish a legitimate public purpose. *City of Scottsbluff v. Winters Creek Canal Co.,* 155 Neb. 723, 53 N W.2d 543 (1952) and *State ex rel. Westminster Presbyterian Church V Edgecomb,* 108 Neb. 859 N.W. 617, 27 A.L.R. 437; regarding *Chicago, B & Q.R.R. Co v. Drainage Commissioners,* 200 U.S. 561, 26 S.Ct.341, 50 L.Ed. 596.

In *United States Brewers' Assn. Inc. v. State*, 192 Neb. 328, 220 N.W.2d544 (1974), the Legislature somehow got into the business of protecting existing beer distributorships by

requiring manufacturers to jump through some hoops and get permission to terminate them or to do business with new ones, claiming that the public health and safety required it. The court said:

> Measures adopted by the Legislature to protect the public health and secure the public safety and welfare must have some reasonable relation to those proposed ends. A citizen has a constitutional right to own, acquire, and sell property; and if it is apparent that a statute under the guise of a police regulation does not tend to preserve the public health, safety, or welfare but tends to stifle legitimate business by creating a monopoly or trade barrier, it is unconstitutional as an invasion of the property rights of the individual. *Lincoln Dairy Co. v. Finigan*, 170 Neb 777, 104 N.W.2d 227.

This principle of law applies to political entities set up by the Legislature. From that principle, two issues arise: "proposed ends" and "stifling legitimate business by creating a monopoly or trade barrier."

The proposed ends in our case are, or ought to be, those laid down by the Legislature. δ δ13-2020 and 13-2017 contain some examples. The production of waste ought to be reduced as much as possible at the source. Further, government programs ought to "reduce the overall cost of government involvement." [δ13-2002 (7)(b) shows the Legislature got the point of *Lincoln Dairy.*]

The material at issue is defined at δ81-1502 (26), (16) and (15). (26) says, as pertinent here: "Solid waste shall mean any garbage, refuse . . .and other discarded material . . ." (16) says: "Garbage shall mean rejected food wastes, including waste accumulation of animal, fruit, or vegetable matter used or tended for food of that attend the preparation, use, cooking,

dealing in, or storing of meat, fish, fowl, fruit, or vegetables. . ." (15) says: "Refuse shall mean putrescible and nonputrescible solid wastes, except bad wastes, and includes garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, and solid market and industrial wastes . . ." "Putrescible" means it might rot with an offensive smell. "Non" means it won't.

The mental picture we get from words like "garbage" and "refuse" and "food wastes" and "putrescible" is a pile or a pool of bad-smelling stuff with a cloud of flies buzzing about. That is not always the case. It is self-evident that some solid waste consists of "inert" more or less harmless substances. The court takes judicial notice that the majority (not just the plurality) of landfill contents in this country is paper. It is inert and innocuous unless it catches on fire or has other refuse stuck to it.

The key phrase here is "discarded material." If it isn't discarded, it isn't solid waste.

The environmentally conscientious gardener who digs his potato peels and banana skins into the garden for the good of his crops has committed no offense. Likewise, the safety conscious wood-stove user who stores his ashes in a metal container till he's sure they are completely dead. Maybe he'll even throw some of them on the garden to keep out slugs. The real environmentalist will keep his newspapers till he can get them to a recycling place rather than throw them out in the trash. Of course if he only takes the local paper, it will take weeks or months at eight pages per week to make it worth the trip. This is the kind of conduct approved by the statutes but made by the ordinance to be economically unreasonable.

The problem which *ought* to be addressed by 4.05 is already more reasonably addressed in Nebraska Law, which

prohibits the creating of a nuisance. SWANN's own regulation 4.04 and 5.04 mention that law, which is an entirely sufficient remedy.

By permitting solid waste generators to opt out of government imposed systems, the Legislature obviously contemplated some competition in the business of solid waste disposal. The ordinance has the effect of stifling competition because it makes unreasonable demands of people who would rather opt out. Comparing 4.04 and 5.04 (with5.02) of the regulations clarifies this situation. SWANN provides service to municipalities. Therefore, no one may "store or stockpile" solid waste in a municipality for more than 14 days. SWANN does not provide service to all rural areas. Therefore, no one may "store or stockpile" solid waste outside a municipality for more than 365 days.

The plaintiff's motion for summary judgment, filed November 30, 2000, is granted as to Regulation 4.05 A., B., C., and all of E after the first paragraph, which consists of five lines and one word, ending with "authorized agent of the permitted facility."

IT IS THEREFORE ORDERED that the plaintiff's motion for summary judgment on his third amended petition is granted. The plaintiff is not liable to the defendant for any fees previously sought by plaintiff. Costs are assessed against the defendant.

By the Court,

s/Paul D. Empson District Judge
Paul D. Empson District Judge

On April 30, 2001, copies of this order were mailed to the parties or their attorneys.

s/Mace McGinley
Clerk of the District Court

APPENDIX C

IN THE DISTRICT COURT OF
DAWES COUNTY, NEBRASKA

MICHAEL JACOBSON	)	**CASE NO. C199 166**
Plaintiff,	)	
	)	
vs.	)	
	)	
SOLID WASTE AGENCY	)	**STIPULATION**
NORTHWEST NEBRASKA,	)	
SWANN Defendant	)	

COMES NOW the Plaintiff and the Defendant by and through its undersigned attorney, and make this stipulation for the purpose of submitting issues and an agreement upon facts for disposition of the Plaintiff's motion for summary judgment.

The parties stipulate and agree as follows:

1. The Plaintiff has files an "Amendment to the Petition for Declaratory Judgment" which is the Plaintiff's third amended petition. The Defendant has filed its "Answer to Plaintiff's Third Amendment to the Petition for Declaratory Judgment". The Plaintiff has alleged that the Rules and Regulations created and passed by the Defendant, January 21, 1999 are not binding upon the Plaintiff and are not enforceable as applied to the Plaintiff for the purpose of requiring the Plaintiff to pay Defendant's rates and charges assessed against the Plaintiff and the Plaintiff's premises for solid waste management, collection and disposal. The parties agree

that a true copy of the Rules and Regulation of the Defendant Agency are attached hereto marked Exhibit "A".

2. The parties agree that the Plaintiff denies that he has utilized in the past, the services of the Defendant Agency either for pick up, removal or disposal of any solid waste, and especially for that period commencing January 1, 1999 and through the date of this stipulation.

3. The parties agree that in support of the Plaintiff's claim that he does not utilize the services of the Defendant Agency for solid waste collection, transportation and disposal, the Plaintiff would offer evidence in the form of receipts, copies of which are attached hereto marked as Exhibit "B".

4. The parties agree that the Plaintiff would testify under oath that he ahs not utilized the services of the Defendant Agency for solid waste collection, transportation or disposal from and after January 21, 1999 to the present. The parties agree that the Defendant would testify under oath that he collects and transports all of his solid waste personally to an alternate solid waste land fill located on the Pine Ridge Indian Reservation and owned and operated by the Oglala Lakota Nation, Pine Ridge, South Dakota.

5. The parties further stipulate and agree that the Plaintiff does not comply with the Defendant's Rules and Regulations by:
   a. Providing the written statement required by Rules and Regulations of the Defendant Agency set forth in Section 4.05 (B); and

   b. Plaintiff does not provide the required receipts

as provided and required by the Rules and Regulations of Defendant Section 4.05(E).

6. The Plaintiff and the Defendant further stipulate and agree that the following facts may be accepted by the Court as true:

   a. The Plaintiff is a resident of Sheridan County, Nebraska and a sole resident (tenant) of the property more specifically described as follows: 613 North Ash Street, Gordon, Nebraska (N15'Lot 8, Pt. of Lot 9, Block 40, Original Town of Gordon, Sheridan County, Nebraska;

   b. The Defendant is an entity with its principal place of business in Chadron, Nebraska, being a political subdivision created under the Nebraska Interlocal Cooperation Act, NEB.REV.STAT δ13-801 to 13-827 and the Integrated Solid Waste Management Act, NEB.REV.STAT. δ13-2001 et seq.;

   c. The City of Gordon, Sheridan County, Nebraska is a member of the Defendant entity, Solid Waste Agency of Northwest Nebraska, and the Plaintiff's residence is located within the jurisdiction of the Defendant entity and the City of Gordon, Sheridan County, Nebraska;

   d. The Defendant entity was formed for the purpose of management, collection, disposal, and recycling of solid waste within the jurisdiction of the Defendant entity;

   e. The Defendant entity as part of its official functions, picks up and disposes of our receives

solid waste in each of its member jurisdictions;

f. The parties agree that the Defendant Agency offers and provides generally the following services and benefits within each of the member jurisdictions:

i. Solid waste disposal dumpsters and solid waste containers are provided for private and/or commercial use.

ii. The Defendant has provided and offered collection and pick up of solid waste for dumpsters and individual solid waste containers bi-weekly; and special pick up arrangements for residential customers at no charge.

iii. Green dumpster collection for yard waste and composting are provided by Defendant to persons residing within the jurisdiction.

iv. The Defendant provides recycling services and benefits to persons residing within the jurisdiction.

v. Defendant promotes and provides summer youth education for all persons within the jurisdiction including Scout groups, etc.

vi. Defendant provides community event collection services, and including community events.

vii. The Defendant provides containers for city-wide cleanup activities and Defendant further maintains and provides alley cleanup.

viii. Defendant provides a community solid waste drop off location for each community within the Defendant's jurisdiction including the jurisdiction.

ix. Defendant provides public education presentations regarding solid waste

management, collection and disposal.

x. The Defendant co-sponsors hazardous materials collection day and assists and provides in disposal of hazardous waste at an alternate facility.

xi. The Defendant offers and provides a paint drop and swap program within its jurisdiction.

xii. The Defendant provides assistance and grant writing for municipal projects including the municipality of Gordon, Nebraska.

xii. The Defendant provides crushed concrete for the use of municipalities and specially for the Gordon alley improvement project.

xiii. The Defendant provides assistance and grant writing for municipal projects including the municipality of Gordon, Nebraska.

xiv. The Defendant provides special disposal sites and assistance for natural disasters.

7. The parties further stipulate and agree that from and after January 21, 1999, the Defendant Agency has regularly billed the Plaintiff for solid waste collection, transportation and disposal services at the rate of $14.80 per month and there is claimed owing to the Defendant Agency by the Plaintiff, the sum of $382.29 as of November 1,2000.

DATED this 23rd day of January, 2001.

SOLID WASTE AGENCY OF NORTHWEST NEBRASKA,
Defendant

By s/ *Dennis D King*
Dennis D. King, NSBA #12220
One of Defendant's Attorneys
SMITH AND KING, P.C.
P.O. Box 302
Gordon, NE 69343-0302
Telephone: 308-282-0690
Facsimile: 308-282-1029

DATED this 23rd day of January, 2001

s/ Michael Jacobson
Michael Jacobson, Plaintiff

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 4/30 19 99

Customer's Name: Michael Jacobson

Address: 613. N. Ash

Gordon, NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
4/30	3 garbage bags @ each	5 00
		5 00

No. 2112 Rec'd by. alh

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 10/21 19 99

Customer's Name: Michael Jacobson

Address: 613 N. Ash

Gordon, NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	User fee's for May 1999 & June 1999.	$10 00
		$10 00

No. 2249 Rec'd by. alh

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 10/21 19 99

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon, NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	10 bags of garbage cash	$ 5.00
		$ 5.00

No. 2248 Rec'd by. Alh

BEST AVAILABLE COPY

613 North Ash

Gordon NE 69343

11-23 cc-d 1999

RECEIVED FROM Michael Jacobson

five and 00/100 DOLLARS

$3 bags of trash

Account Total $ #5.00 cash Solid Waste Mgmt

Amount Paid $

Balance Due $ Agency Protection

THE EFFICIENCY LINE AN AMPAD PRODUCT

12-23-99

Vince Tiffany

$5.00

613 North Ash
gordon NE

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 12-23 19 99

Customer's Name Michael Jacobson

Address 613 North Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE RECD	DESCRIPTION	AMOUNT
12/23	bags of trash	5 00
		5.00

№ 2511 Rec'd by me

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 1-31 2000

Customer's Name Michael Jacobson

Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE RECD	DESCRIPTION	AMOUNT
1/31	bags of trash	5 00
		5.00

№ 2512 Rec'd by me

OGLALA LAKOTA NATION
Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 2-29 2000

Customer's
Name Michael Jacobson
Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
2/29	bags of trash	5.00
		5.00

№ 2513 Rec'd by.

OGLALA LAKOTA NATION
Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 3/31 2000

Customer's
Name Michael Jacobson
Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	Trash	5.00
	Cash	
		5.00

№ 2547 Rec'd by: mp

OGLALA LAKOTA NATION

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 5-11 2000

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	Trash for April 2000	5 00
		5 00

№ 2621 Rec'd by: MP

Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770

(605) 867-1464 FAX (605) 867-1464

date: 5-11 2000

Customer's

Name Michael Jacobson

Address 613 N. Ash

Gordon NE 69343

RECEIPT OF PAYMENT

DATE REC'D	DESCRIPTION	AMOUNT
	Trash for May 2000	5 00
		5 00

№ 2620 Rec'd by: MP

Solid Waste Management
PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 1/22 19 2001

Customer's Name Michael Jacobson
Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE Rec'd	DESCRIPTION	AMOUNT
	Oct 2000	5 00
	Nov 2000	5 00
	Dec 2000	5 00
		15 00

№ 2714 Rec'd by

Solid Waste Management
PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 1/22 19 2001

Customer's Name Michael Jacobson
Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE Rec'd	DESCRIPTION	AMOUNT
	January 2001	5
	3 bags garbage	
		5 00

№ 2715 Rec'd by

OGLALA LAKOTA NATION
Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 7-23 2000

Customer's
Name Michael Jacobson
Address 613 N. Ash
Gordon NE 69343

RECEIPT OF PAYMENT

DATE RECD	DESCRIPTION	AMOUNT
	June July	10 00
	cash	
		10 00

№ 2631 Recd by: MB

OGLALA LAKOTA NATION
Solid Waste Management

PO Box 296 · Pine Ridge, SD 57770
(605) 867-1464 FAX (605) 867-1464

date: 9-20 2000

Customer's
Name Michael Jacobson
Address 613 N. Ash
Gordon NE

RECEIPT OF PAYMENT

DATE RECD	DESCRIPTION	AMOUNT
	Aug 2000	5 00
	Sept 2000	5 00
	load of branches	10 00
		20 00

№ 2687 Recd by: MB

APPENDIX D

MICHAEL JACOBSON, APPELLEE, v SOLID WASTE AGENCY OF NORTHWEST NEBRASKA (SWANN), APPELLANT

__N.W.2d__

Filed November 22, 2002 No. S-01-602

1. **Evidence: Stipulation: Appeal and Error.** In a case in which the facts are stipulated, an appellate court reviews the case as if trying it originally in order to determine whether the facts warranted the judgment.
2. **Statutes: Appeal: and Error.** When an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent, correct conclusion irrespective of the determination made by the court below.
3. **Municipal Corporations.** A municipality has an affirmative duty to supervise and control the collection of garbage within its corporate limits.
4. **Statutes: Ordinances: Presumptions.** All ordinances are presumed to be valid. However, the power of a municipality to enact and enforce any ordinance must be authorized by state statute.
5. **Statutes: Ordinances.** Where there is a direct conflict between a municipal ordinance and a state statute, the statute is the superior law. However, if the municipal ordinance and state statute in question are not contradictory and can coexist, then both are valid.
6. **Courts: Statutes: Ordinances.** A court has a duty to harmonize state and municipal legislation on the identical subject.
7. **Statutes: Legislature: Intent.** In construing an ambiguous statute, a court may examine the legislative

history of the act in question to assist in ascertaining the intent of the Legislature.

8. **Ordinances: Presumptions: Proof.** In considering the validity of a regulation, courts generally presume that legislative or rulemaking bodies, in enacting ordinances or rules, acted within their authority, and the burden rests on those who challenge their validity.

9. **Ordinances: Evidence.** To overturn an ordinance on the ground that it is unreasonable and arbitrary or that it invades private rights, the evidence of such facts should be clear and satisfactory.

Appeal from the District Court for Dawes County; PAUL D. EMPSON. Judge, Reversed and remanded with directions.

Dennis D King, of Smith, King, and Freudenberg, P.C., for appellant.

Thomas A Hawbaker, of Law Offices of Thomas A. Hawbaker, and Joe M Hawbaker for appellee, and on brief, Michael Jacobson, pro se.

HENDRY, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, AND MILLER-LERMAN, JJ.

STEPHAN, J.

Solid Waste Agency of Northwest Nebraska (SWANN) appeals from a declaratory judgment entered by the district cout for Dawes County which determined that Michael Jacobson was not liable to SWANN for solid waste collection, transportation, and disposal service charges.

BACKGROUND

PROCEDURAL BACKGROUND

Jacobson, a resident of Gordon, Nebraska, initiated this action by filing a pro se petition for declaratory judgment in the district court for Dawes County. He sought a declaration that he is not obligated to pay solid waste collection, transportation, and disposal charges assessed by SWANN because he does not use or benefit from SWANN's services. In its answer, SWANN denied Jacobson's claim that he does not use or benefit from its services and alleged that Jacobson did not comply with its rules and regulations for opting out of service charge liability.

At a hearing on November 7, 2000, the parties advised the court that Jacobson would be filing a motion for summary judgment challenging the legal validity of the rules and regulations relied upon by SWANN. Jacobson subsequently filed a motion for summary judgment asserting that three specific rules adopted by SWANN on January 21, 1999, were not authorized under the Integrated Solid Waste Management Act, Neb. Rev. Stat. §§ 13-2001 to 13-2043 (Reissue 1997), and violated his rights under the state and federal constitutions. A hearing on the motion was held on January 31, 2001. The parties offered a stipulation of facts which was received in evidence. Counsel for SWANN then advised the court that the parties had agreed to file an additional stipulation and requested that the matter be deemed submitted on the merits for final disposition. Thereafter, the parties filed a "Stipulation for submission of Case" which referred to the prior receipt by the court of the factual stipulation and further stated that "the

parties agree that this case shall be deemed submitted for a decision on the merits, and the decision of the Court shall be considered a final judgment in this matter."

STIPULATED FACTS

Jacobson is the sole resident and tenant of real property located at 613 North Ash Street, Gordon, Nebraska. SWANN is a political subdivision created under the Interlocal Cooperation Act, Neb. Rev. Stat. δ13-801 to δ13-827 (Reissue 1997), and the Integrated Solid Waste Management Act. The city of Gordon, located in Sheridan County, Nebraska, is a member of SWANN, and Jacobson's residence in Gordon is located within SWANN's jurisdictional area.

SWANN was formed for the purpose of management, collection, disposal, and recycling of solid waste within its jurisdictional area. As part of its official functions, SWANN picks up and disposes of or receives solid waste in each of its member jurisdictions. SWANN provides additional services and benefits within each member jurisdiction, including the provision of dumpsters and solid waste containers, the provision of recycling services, the sponsorship of educational programs and community events dealing with solid waste management, the collection of hazardous materials and paint, the provision of crushed concrete for the use of municipalities, and the provision of special disposal sites and assistance for natural disasters.

Since January 21, 1999, SWANN has regularly billed Jacobson for solid waste collection, transportation, and disposal services at the rate of $14.80 per month. SWANN claims that the sum of $382.29 is due and owing on such billings as of November 1, 2000. Jacobson denies that he utilized the services of SWANN during the period covered by such billings, or at any time. Jacobson claims that he personally collects and transports all of his solid waste to an alternate solid waste landfill owned and operated by the Oglala Lakota National. In support of his position, Jacobson produced 13 "receipt[s] of payment" from Oglala Lakota Nation Solid

Waste Management in Pine Ridge, South Dakota, bearing dates between April 30, 1999, and January 22, 2001. He also produced a receipt, dated November 23, 1999, from an entity designated as "Solid Waste Mgmt." Some of the receipts describe "bags of trash" or "bags of garbage" in varying or unspecified quantities and further describe amounts paid by Jacobson, presumably for disposal of such items. The receipts also reflect Jacobson's address as "613 N. Ash, Gordon, NE." Although it is not clear from the stipulation of facts whether any of these receipts were ever submitted to SWANN, it is clear that Jacobson has not provided the written statement required by SWANN's regulation δ4.05 (B), and he has not provided the receipts required by δ4.05 (E).

DISPOSITION BY DISTRICT COURT

Based upon the foregoing stipulated facts, the district court determined that although Jacobson was a "'solid waste generator,'" SWANN had no authority to "regulate" Jacobson or his solid waste because Jacobson had taken the steps required by δ13-2020(4) to exempt himself from SWANN's charges; by providing evidence that he disposed of his solid waste at an alternate facility. The court further held that a portion of SWANN's rules and regulations requiring specific proof to exempt a solid waste generator from SWANN's charges was unreasonable and therefore invalid. Based upon these determinations, the district court concluded that Jacobson was not liable to SWANN for any fees or charges it sought to collect and entered judgment in favor of Jacobson. SWANN perfected this timely appeal, which we moved to our docket on our own motion pursuant to our statutory authority to regulate the caseloads of the appellate courts of this state. See Neb.Rev.Stat. δ24-1106(3) (Reissue 1955).

ASSIGNMENT OF ERROR

SWANN assigns, restated and consolidated, that the district court erred in (1) construing Integrated Solid Waste

Management Act to limit SWANN's jurisdiction and authority to regulate and (2) granting Jacobson's motion for summary judgment as to SWANN's regulation δ4.05.

STANDARD OF REVIEW

[1] In a case in which the facts are stipulated, an appellate court reviews the case as if trying it originally in order to determine whether the facts warranted the judgment. *J.D. Warehouse v. Lutz & Co.*, 263 Neb. 189, 639 N.W..2d88 (2002); *Ray Tucker & Sons v. GTE Directories Sales Corp.*, 253 Neb. 458, 571 N.W.2d64 (1997).

[2] When an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent, correct conclusion irrespective of the determination made by the court below. *Shirley v. Neth, ante* p. 138, 646 N.W.2d 587 (2002); *Salkin v. Jacobsen*, 263 Neb. 521, 641 N.W.2d 356 (2002).

ANALYSIS

APPLICABLE STATUTES AND REGULATIONS

SWANN derives its authority from the Integrated Solid Waste Management Act (hereinafter the Act). enacted in 1992, in which the Legislature expressly recognized that the local governments are "best positioned to develop efficient solid waste management programs." δ13-2002(5) The Act requires each county or municipality to provide for disposal of solid waste generated within its jurisdiction. δ13-2002(1) Under the Act, "[the] governing body of a county, municipality, or agency may make all necessary rules and regulations governing the use, operation, and control of a facility or system" ." δ13-2002(4). Section 13-2023 grants express authority to pass such regulations and states in relevant part: "A county, municipality, or agency may, by ordinance or resolution, adopt regulations governing collection, source separation, storage, transportation, transfer, processing treatment, and disposal of solid waste within its solid waste jurisdiction area as necessary to protect

the public health and welfare and the environment." It is clear from established case law, as well as from a plain reading of the Act, that a political subdivision such a SWANN is "expressly empowered to establish ordinances regulating the collection and removal of garbage." See *Tracy v. City of Deshler*, 253 Neb. 170, 174, 568 N.W.2d 903, 907 (1997). Accord *Village of Winside v. Jackson*, 250 Neb. 851, 553 N.W.2d 476 (1996).

In *Village of Winside v. Jackson*, 250 Neb. 851, 553 N.W.2d at 480, we held that under the Act as it was then written, "[a] municipality can impose a garbage fee on only those persons that actually use the garbage services provided." We therefore concluded that a village ordinance which imposed a garbage fee on every occupied residence and business, regardless of whether the resident or business owner chose to use the village garbage system, was contrary to the plain language of the Act and thus invalid insofar as it required payment for services which were not used.

In response to Village of Winside, a bill was introduced during the 1997 session of the Legislature to amend the language of §13-2002 in order to "more clearly define when a premises is served by a solid waste collection system" and to "ensure that the solid waste systems remain viable." Introducer's Statement of Intent, L.B. 135, Natural Resources Committee, 95th Leg., 1st Sess. (February 26, 1997). The amendment, as initial proposed during the committee's hearing, would have allowed sub-divisions which owned and operated solid waste systems to charge a flat fee to all residents by reason of the fact that a waste disposal system was present and available for their use. Additional language, however, was later added to provide an opportunity for a waste generator to opt out of the system. Floor Debate, L.B. 495, 95th Leg., 1st Sess. 8906 (May 30, 1997). The final version of the amendment was incorporated into §13-2020(4) as follows:

> For purposes of the charges authorized by this section, the premises are served if solid waste collection service

is available to the premises or if a community solid waste drop-off location is provided, unless the person who would otherwise be subject to such rates or charges proves to the governing body of the county, municipality, or agency that his or her solid waste was lawfully collected and hauled to a permitted facility. Such proof shall be provided by a receipt from a permitted facility, a statement from a licensed hauler, or other documentation acceptable to the governing body of the county, municipality, or agency.

This amendment creates a rebuttable presumption that premises of a solid waste generator located within an area served by a public solid waste collection and disposal system are "served" by such a system. The generator is therefore subject to the system's charges unless the generator takes the steps necessary to obtain an exemption.

On January 21, 1999, SWANN issued Ordinance/Resolution No. 1999-01, which enacted rules and regulations governing disposal and transportation of solid waste within its jurisdiction. The ordinance recited that the rules and regulations promulgated therein were based upon the authority of the Act and the Interlocal Cooperative Act creating SWANN, for the purposes of the following:

A. Identifying those actions, standards and activities necessary to assure effective solid waste handling and disposal of solid waste within the agency jurisdiction;

B. To follow the direction, standards and requirements of state and federal laws as the same may be set from time to time for management of sold waste;

C. To describe the responsibility of persons generating, storing, collecting and transporting solid waste within the jurisdiction of the SWANN agency.

The rules which are at issue in this action provide as follows:

2.06 PERMITITED FACILITY/PERMITTED LANDFILL shall mean a landfill approved by the Director of

the Nebraska Department of Environmental Quality and shall include that term as set forth under NEB.REV.STAT. δ13-2020 and applicable rules and regulations of the state of Nebraska, or a landfill located in any other state which has been approved by that state's Department of environmental Quality or equivalent governing agency and which landfill is an approved landfill facility under the laws, rules and regulations of that state, also meeting applicable federal standards as well as the standards adopted by that state.

.....

4.04 STORAGE/NUISANCE. No person shall be permitted to store or stockpile solid waste within the limits of any municipality located within the jurisdiction of the Agency, when such solid waste would create a nuisance as described in the Nebraska state law, any city or village ordinance governing nuisances within such jurisdiction, and **no person hall store or stockpile solid waste within the limits of such municipality for a period of fourteen (14) days or more.**

4.05 MUNICIPAL SOLID WASTE ACCOUNT LIABILITY. All solid waste generators within the limits of any municipality located within the jurisdiction of the Agency shall be subject to and liable for the rates and charges established by the Agency for solid waste collection, handling and disposal by the Agency, except as exempted hereinafter by these rules and regulations.

A. *Exemption from Rates and Charges/Alternate Permitted Landfill, Out of State* Any solid waste generator outside the municipal limits may elect to transport and dispose of such generator's solid waste at a permitted facility or permitted landfill, as that term is defined hereinbefore. So long as the solid waste of such solid waste generator is safely and sanitarily transported by the solid waste generator to a permitted landfill or permitted facility as hereinbefore defined, and so long as such solid waste generator shall further comply with these rules and regulations and provide the Agency with a written

statement as hereinafter described, then such solid waste generator shall be exempt from payment of the rates and charges of the Agency for solid waste collection and disposal during the applicable period.

B. *Written Statement* The solid waste generator desiring to be exempt from the rates and charges of the Agency shall first provide to the Agency a written statement in the following form:

1. The statement shall set forth the full legal name of the solid waste generator and/or person liable for the solid waste account if such solid waste were collected and/or disposed by the Agency;

2. The statement shall be signed by the solid waste generator;

3. The statement shall set forth the date when the solid waste generator will cease using the services of the Agency and will commence transporting and disposing of all of the generator's solid waste to a permitted landfill or permitted facility located outside the state of Nebraska;

4. The statement shall acknowledge that the solid waste generator is utilizing an alternate landfill facility and is therefore not permitted, licensed or authorized to use or receive services of the Agency for collection, handling or disposal of solid waste generated by such person;

5. The statement shall provide that the solid waste generator acknowledges any violation of rules and regulations of the Agency or any breach of the rules and regulations of the Agency including the unauthorized use of the Agency facilities during such period that the statement is in effect will subject the solid waste generator to liability for the noncompliance fee as hereinafter set forth;

6. The statement shall further provide that the solid waste generator acknowledges the responsibility to provide the Agency with the "receipts" as required from time to time proving the safe and sanitary transportation and disposal of the solid waste generator's solid waste at a permitted facility

located outside of the state of Nebraska.

C. *Written Statement Effective Period* The foregoing written statement may be executed and provided to the Agency at any time, and shall be affective with regard to exemption from rates and charges commencing the next billing period of the Agency. The statement once filed with the Agency shall be deemed to be an election by the solid waste generator to opt out of the Agency's collection and disposal services, and the solid waste generator shall be deemed to be a person opting out of the Agency's services for collection and disposal until such time as the solid waste generator gives written notice that the generator desires to become a customer of the Agency, or the solid waste generator fails to provide the receipts as hereinafter provided.

D. *Rejoining Agency* In the event that any person shall have elected to "opt out" of the Agency's jurisdiction, and shall thereafter become a customer of the Agency as provided in paragraph 4.05(C), then such person shall not be eligible to again "opt out" for a period of one year after the solid waste generator has rejoined the Agency as a customer of the Agency.

E. *Receipt* A receipt from a "permitted facility" shall mean a written receipt from the "permitted facility". The "receipt" shall set forth the solid waste generator's name, address, date of disposal, quantity of disposal, type of waste disposed, the name and an address of the "permitted facility" and shall bear the original signature of the authorized agent of the "permitted facility"

The solid waste generator shall submit at least two (2) receipts monthly from the alternate "permitted facility" .

The Agency reserves at all times, the right to reject any receipt or written statement if the same is not prepared and filed with the Agency in accordance with these rules and regulations. Each written statement and receipt shall first be approved by the Agency pursuant to NEB.REV.STAT. δ13-2020.

AUTHORITY TO REGULATE

Although Jacobson stipulated that his residence was located within the geographical jurisdiction of SWANN, he contends that the agency's regulatory jurisdiction does not extend to solid waste that is "inside his own home." Brief for appellee at 5. The district court interpreted SWANN's regulatory jurisdiction as extending only to solid waste which is "discarded" and thus "enter[s] the system". It concluded that solid waste generated by Jacobson did not "enter the system" because Jacobson hauled his waste to an alternate facility as permitted by δ13-2020(4) and that therefore SWANN has no regulatory authority over Jacobson or any solid waste generated at his residence, SWANN contends that this interpretation of its regulatory authority over solid waste is overly restrictive. We agree.

[3] As we noted in *Village of Winside v. Jackson*, 250 Neb. 851, 553 N.W.2d 476 (1996), the Act is designed to provide a comprehensive scheme to control the collection and disposal of solid waste. The Act permit's a municipality to adopt ordinances or regulations governing solid waste within its jurisdiction as necessary to protect the public health and welfare as well as the environment. Id. See, also, δ13-2023. In *Tracy v. City of Deshler*, 253 Neb. 170, 175, 568 N.W.2d 903 (1997), we recognized as "well settled" the principle that a municipality has an affirmative duty to supervise and control the collection of garbage within its corporate limits.

This court is guided by the presumption that the Legislature intended a sensible rather than an absurd result. *Spaghetti Ltd. Partnership v. Wolfe*, ante p. 365, 647 N.W.2d 615 (2002). The Act specifically assigns the responsibility of regulation and oversight of solid waste to local governing bodies because the Legislature determined that such bodies were in the best position to develop efficient waste management programs δ13-2002(5).

To impose on local governments the responsibility to regulate solid waste and then not grant them the authority necessary to fulfill their obligations would lead to an absurd result.

Accordingly, we conclude that SWANN's regulatory authority extends to all solid waste generated within its area of jurisdiction. Although δ13-2020(4) provides a means by which a resident or business may avoid paying a service fee to a municipality having regulatory jurisdiction under the Act, it does not alter the power to regulate conferred by the Act.

VALIDITY OF REGULATIONS

Having determined that SWANN had authority to regulate solid waste generated at Jacobson's residence, we must now consider whether it exercised such authority in a lawful manner. As a preliminary matter, we note that while Jacobson challenged the validity of δ2.06 and δ4.04 and δ4.05(E) of the rules and regulations promulgated by SWANN in January, 1999, the judgment of the district court invalidated only portions of δ4.05 and did not address the validity of δ 2.06 and δ4.04. Jacobson did not file a cross-appeal contending that the district court should have also held δ2.06 and
δ 4.04 to be invalid, and we therefore do not consider that issue. See *Wasikowski v. Nebraska Quality Jobs Bd., ante* p. 403, 648 N.W.2d 756 (2002).

[4-6] All ordinances are presumed to be valid. *Village of Winside v.. Jackson, supra; Whitehead Oil Co v. City of Lincoln,* 245 Neb. 660, 515 N.W.2d 390 (1994) However, the power of a municipality to enact and enforce any ordinance must be authorized by state statute. *Village of Winside v Jackson,* supra *State v Austin* 209 Neb 174, 396 N.W.2d 861 (1981). As noted by the district court, Jacobson's principal contention is that δ13-2020(4) does not authorize the requirement in SWANN's regulation δ4.05(E) that a solid waste generator submit "at least two (2) receipts monthly from the alternate 'permitted facility'" in order to avoid SWANN's service charges. Where there is a direct conflict between a municipal ordinance and a state statute, the statute is the superior law. *Village of Winside v. Jackson,* supra. However, if the municipal ordinance and state statute in question are not

contradictory and can coexist, then both are valid. *Gillis v. City of Madison*, 248 Neb 873, 510 N.W.2do 114 (1995). A court has a duty to harmonize state and municipal legislation on the identical subject. *Id.*

[7] Section δ13-2020(4) authorizes public entities owning or operating solid waste disposal systems to establish rates or charges for their use, to be paid "by each person whose premises are served by the facility or system/" The 1997 amendment to this statute added the following language:

> For purposes of the charges authorized by this section, the premises are served if solid waste collection service is available to the premises or if a community solid waste drop-off location is provided, *unless the person who would otherwise be subject to such rates or charges proves to the governing body of the county, municipality, or agency that his or her solid waste was lawfully collected and hauled to a permitted facility. Such proof shall be provided by a receipt from a permitted facility, a statement from a licensed hauler, or other documentation acceptable to the governing body of the county, municipality, or agency.*

(Emphasis supplied) 1997 Neb. Laws, L.B. 495. The statute is silent as to the frequency with which such proof must be provided in order to exempt a property owner or occupant from service charges. To that extent, the statue cannot be adequately be understood from the plain meaning of its language or when considered in pari material with related statutes, and it is therefore ambiguous. See *Premium Farms v County of Holt,* 263 Neb. 415, 640 N.W.2d 633 (2002). In construing an ambiguous statute, a court may examine the legislative history of the act in question to assist in ascertaining the intent of the Legislature. *supra; Premium Farms v County of Holt, supra Sydow v. City of Grand Island*, 263 Neb. 389, 639 N.W.2d 913 (2002).

The question of how frequently one must provide proof of

alternate solid waste disposal in order to avoid liability for charges was specifically discussed during floor debate on the 1997 amendment to δ13-2020(4). The discussion proceeded as follows:

> SENATOR WICHERSHAM: . . . .I'm wondering what the duration or the period is to be covered by the receipt of the statement is. For example, if you have weekly billings, do you need to present a weekly receipt? If you have monthly billings, do you have to present a monthly receipt? . . .
>
> SENATOR BEUTLER: . . . .I believe there is a degree of flexibility in the amendment and it would seem to me that that's been left to the parties to work out what is reasonable on a reasonable basis.
>
> SENATOR WICKERSHAM: . . .I would assume that the amendment means that if you have a monthly billing period or a weekly billing period that that is the duration of the receipt . . . .
>
> SENATOR BEUTLER: . . .I would certainly think that a monthly requirement would be reasonable. I don't have knowledge of weekly billings, but certainly . . .requiring it on a monthly basis would seem perfectly reasonable, under this amendment, to me.

Floor Debate, L.B. 495, 95th Leg., 1st Sess., 8907, 8909 (May 30, 1997).

From this, we conclude that although the statute used the singular form of the word "receipt," the Legislature intended that periodic submissions of proof would be necessary in order to avoid payment to a municipal system serving the premises, and that the frequency of such submissions would be determined under a standard of reasonableness. So construed, δ13-2020(4) and δ4.05 of the SWANN ordinance are not contradictory. The validity of δ 4.05 therefore depends upon whether it is a reasonable specification of the general proof requirement set forth in δ13-2020(4).

[8, 9] In considering the validity of a regulation, courts

generally presume that legislative or rulemaking bodies, in enacting ordinances or rules, acted within their authority, and the burden rests on those who challenge their validity. *Busch v. Omaha Pub. Sch. Dist.*,261 Neb. 484, 623 N.W.2d 672 (2001); *Village of Winside v. Jackson*, 250 Neb 851, 553 N.W.2d 476 (1996). To overturn an ordinance on the ground that it is unreasonable and arbitrary or that it invades private rights, the evidence of such facts should be clear and satisfactory. *City of Omaha V Cutchall*, 173 Neb. 452, 114 N.W.2d 6 (1962). We find no evidence in this stipulated record upon which we could declare δ 4.05 unreasonable or arbitrary and therefore invalid.

As part of a comprehensive scheme to control collection and disposal of solid waste authorized by the Act, δ13-2020(1) requires municipalities to "provide or contract for facilities and systems as necessary for the safe and sanitary disposal of solid waste generated within its solid waste jurisdiction area." With respect to waste generators which utilize its system, SWANN can control the frequency of waste pickup and disposal. Although SWANN cannot require a waste generator to use its system and pay its charges, it is authorized by δ13-2020(4) to require such persons or entities, as a condition of being exempted from liability for such charges, to prove that they are disposing of solid waste through alternate means which are consistent with SWANN's statutory obligation to provide for safe and sanitary disposal of solid waste within its jurisdictional area. Section 4.05 seeks to accomplish this objective by requiring those waste generators electing not to use SWANN's services to provide a written statement. Under δ4.05 this election to opt out of SWANN's collection and disposal services is effective until the waste generator either uses SWANN's services or fails to provide proof, consisting of receipts showing that waste is being taken to a permitted facility at least twice monthly.

As noted above, we construe δ13-2020(4) to permit a municipal waste disposal agency to require periodic evidence that a generator not using its system is disposing of waste at an

alternate permitted facility on a regular basis. We find nothing in this record upon which we could conclude that requiring such evidence be submitted twice monthly is unreasonable.

We have considered Jacobson's other arguments with respect to the claimed invalidity of δ4.05 and conclude that they are without merit.

CONCLUSION

For the reasons discussed, we conclude that δ4.05 of the rules and regulations adopted by SWANN on Ordinance/Resolution No. 1999-01 is valid. Jacobson's residence is located within SWANN's jurisdictional area, and he did not comply with lawful regulatory requirements necessary to exempt himself from SWANN's charges for solid waste collection, transportation, and disposal services. Jacobson's charges were stipulated to be $382.29 as of November 1, 2000. The judgment of the district court is reversed, and the cause remanded to the district court for entry of judgment consistent with this opinion.

REVERSED AND REMANDED WITH DIRECTIONS.

APPENDIX E

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910 2413 STATE CAPITOL BUILDING
LINCOLN, NE 68509
(402) 471-3731

January 3, 2003

Joe Hawbaker
5405 Decatur
Omaha, NE 68104

IN CASE OF: S-01-000602, Jacobson v Solid Waste Agency of Northwest Nebraska-SWANN

Appellee/Motion for Rehearing **filed** 12/02/02

has been reviewed by the court and the following order entered:

Motion of appellee for rehearing overruled.

Respectfully,

CLERK OF THE SUPREME
COURT AND COURT OF APPEALS

SUPREME COURT)
)
STATE OF NEBRASKA)

ss.

I certify that I have compared the foregoing copy of minute entry overruling appellee's motion for rehearing in the following case: No. S-01-0602, Jacobson v. Solid Waste Agency of Northwest Nebraska-SWANN with the original now on file in my office. The same is a correct copy of the original.

Supreme Court of Nebraska
Seal

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of this Court, in the City of Lincoln, on June 24, 2003.

s/ Janet S Asmussen
Clerk